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December 17, 2002

Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 - 12th Street, SW
Washington, D.C. 20554

Re: Notice of Ex Parte Meeting by Broadview Networks, Talk America,
and Eschelon Telecom,
CC Docket Nos. 01-338, 96-98 and 98-147

Dear Ms. Dortch:

Pursuant to Sections 1.1206(a)(2) of the Commission's Rules we hereby submit, on behalf of Broadview Networks, Talk America, and Eschelon Telecom, in the above-captioned docketed proceedings, this notice of an *ex parte* meeting held on December 11, 2002 with Commissioner Abernathy and Matthew Brill, Legal Advisor to Commissioner Abernathy, of the Federal Communications Commission. The attached presentation was distributed at the meeting and provides further detail to our discussion of the proposed UNE-P to UNE-L Migration Plan. In attendance at the meeting were myself; Gabe Battista, Chairman and CEO of Talk America; Vern Kennedy, CEO and President of Broadview Networks; Richard Smith, President and COO of Eschelon Communications; and Brad Mutschelknaus, Partner, Kelley Drye & Warren LLP.

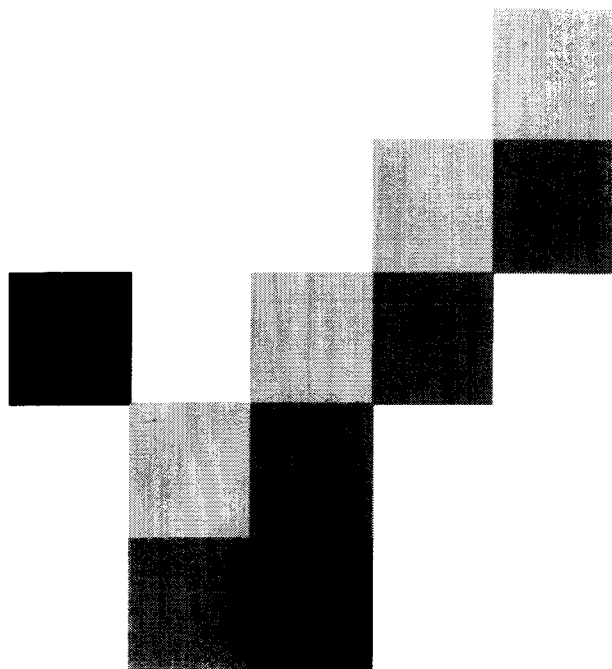
We hereby submit an original and one (1) copy of this notification and attached presentation for inclusion in the public record of the above-referenced proceedings. Please direct any questions regarding this matter to the undersigned.

Respectfully submitted,

Heather B. Gold

Attachment

Cc: Commissioner Kathleen Abernathy
Matthew Brill
Qualex International



UNE-P to UNE-L Migration Plan (UMP) The Path To Facilities-Based Competition In Mass Markets

Gabe Battista: Chairman and CEO - Talk America
Vern Kennedy: CEO and President - Broadview Networks
Richard Smith: President and COO- Eschelon Telecom

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Ionex
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FCC Triennial Review of TA '96

- **FCC seeking solution which balances the diverse interests of the Courts, state PUCs, consumers, ILECs, and CLECs**
- **Broadview Networks, Eschelon, Talk America et al have proposed a compromise plan which requires ILECs and CLECs to migrate UNE-P lines to UNE-L in a manner that does not unreasonably impede CLEC market entry**
- **The UNE-P to UNE-L Migration Plan (UMP) requires ILECs to create reliable processes for hot cutting UNE-P lines *and* directs state PUCs to require UNE-P to UNE-L migration once CLECs exceed prescribed line densities**



UMP Has Four Significant Steps

- **Step 1: ILEC Must Eliminate Impairment From Hot Cut Process**
 - Need to develop, implement, and have certified a loop migration process in each state

- **Step 2: CLECs Must Acquire Sufficient Customer Density to Justify Facilities Investment**
 - States to set density triggers based on rates, terms and local conditions
 - Densities to be determined for switch, collocation and transport facilities deployment



UMP Has Four Significant Steps (cont'd)

- **Step 3: CLECs Need Time to Build Facilities**

- Initial migration: 18 months
- Subsequent migrations: at least 6 months

- **Step 4: CLECs Must be Able to Continue to Acquire Customers via UNE-P**

- 1. In existing collocations to achieve sufficient numbers of lines for migration
- 2. To acquire customers in non-collocated locations to build toward density triggers
- 3. To acquire and serve customers who have both on-net and off-net locations



Only UMP Can Satisfy FCC Concerns

■ FCC Stated Concerns:

- Encourage rational, sustainable, facilities-based investment; incorporate more granularity into UNE analysis
 - We should be...aggressive in developing incentives that push entrants to enter in a manner that offers long-term sustainable choice and meaningful welfare for consumers *and*
 - Only through facilities based competition can an entity bypass the incumbent completely and force the incumbent to innovate to offset lost wholesale revenues (Chairman Powell: Goldman Sachs - 10-02-02)

■ UMP Answer:

- Enables CLECs to reach critical mass, but requires them to migrate to facilities when they succeed



Only UMP Can Satisfy DC Circuit Concerns

■ Court Stated Concerns:

☐ Unvarying scope

- The Commission chose to adopt a uniform national rule, mandating the element's unbundling in every geographic market and customer class, without regard to the state of competitive impairment in any particular market

☐ Kinds of cost disparities:

- Cost differences must be attributable to more than the normal start-up costs incurred in any industry

■ UMP Answer:

- ☐ Determines line density for migration at the LATA level
- ☐ Impairment tied to ILEC hot cut inadequacy and network/interconnection costs imposed on CLEC by ILEC



UMP is a Win-Win, Lose-Lose for All

- ILECs need to remove hot cut impairment
- CLECs must deploy facilities
- FCC needs to set national guidelines
- States must implement migration rules

Result: Rational, economic investment in facilities-based competition for all consumers



CLEC Efforts To Compete Remain Impaired Without ULS

- Current ILEC “hot cut” processes are incapable of converting large volumes of DS0 unbundled local loops on a timely and seamless basis
- ILEC hot cut, loop, collocation and transport charges render self-provisioned switching uneconomic until critical mass (line density) is achieved



Only UNE-P Resolves Entry Impairment Issues in Mass Markets

- Competition in mass markets (residential and small business) requires:
 - Ability to turn up large number of customers quickly and seamlessly
 - Service over geographically dispersed area
 - Wholesale pricing at TELRIC
- Without these conditions, the FCC is effectively eliminating competitive alternatives for the mass market for the foreseeable future



UNE-P Entry Can Lead to Facilities-Based Competition

- **UNE-P as a customer acquisition vehicle can lead to facilities investment**
 - As carriers' acquire large number of customers in given LATAs, economics of switch, collocation and interconnection become feasible
 - Investors require that revenues precede investment
- **In order to provide for this transition, regulators must:**
 - Provide incentives for the ILECs to resolve hot cut impairment issue
 - Require CLECs to deploy switches where line densities make self-provisioned switching **economically** feasible



ILEC Proposals Fail to Address FCC and Court Concerns

- **All ILEC Proposals Fail to Meet Any of
Stated Objectives**
 - No analysis of existing impairments or proposed solutions
 - No granular analysis - one nationwide rule
 - No incentives to encourage facilities-based investment -- only ILEC wholesale revenue enhancement
 - Resulting ILEC cost-price squeeze precludes competitive entry in the mass market